



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 27, 2005

LOY PEHRSON
RT 1 BOX 48
DARLINGTON, ID 83255

LOGAN E. WILLIAMS, JR.
HC 86 BOX 4160
MACKAY, ID 83251

BOB DUKE
WATERMASTER, DISTRICT 34
P.O. BOX 53
MACKAY, ID 83251-0053

PRESTON K. BELL
RT. 1 BOX 58
DARLINGTON, ID 83231

ERIC AIKELE
3477 W. 2700 N.
MOORE, ID 83255

DARRELL MCDONALD
P.O. BOX 102
ARCO, ID 83213-0102

LARRY A. QUIST
RT. 1 BOX 203
ARCO, ID 83213

ROBERT D WADDOUPS
RT. 1 BOX 42
MOORE, ID 83255

LIN HINTZE
P.O. BOX 125
MACKAY, ID 83251

KEITH B HILL
STAR RT.
MACKAY, ID 83251

JAY V. JENSEN
3300 KING MT. RD.
MOORE, ID 83255

Dear Sirs:

In a letter dated March 18, 2005, the Idaho Department of Water Resources (IDWR) set a May 15, 2005 deadline for the Water District 34 water users to commit 6,110 acre-feet of mitigation water to be used for augmenting the river. To date, the Water District has submitted a spreadsheet listing each water user's names, each water user's mitigation burden, the proposed source of the water to satisfy the burden, and the amount of water anticipated from that source. According to information on the submitted spreadsheet, the total volume dedicated to mitigation is about 6,200 acre-feet from the identified sources. The spreadsheet does not provide sufficient detail about:

- (1) How mitigation water or augmentation flows will be made available,
- (2) How each ground water user's mitigation burden will be dedicated, and
- (3) The timing for release of the water during the first or second semester.

IDWR cannot formally approve the mitigation plan with the information that has been offered.

Prior to addressing specific remedies to fix the deficiencies in the spreadsheet information, the following standards will be employed:

- (1) The midpoint dividing the first and second semesters for delivery of augmentation water is July 23;
- (2) Because of recent spring rains, IDWR will now consider 1997 as a model year for determining deliverability of natural flow rights for the Big Lost River in 2005. Based on 1997 delivery records, the earliest priority water rights that cannot be delivered will be 1887 water rights and
- (3) Maximum credit granted to natural flow rights accepted for mitigation will be limited to the lesser of (i) the annual volume authorized for the water right (presumed to be 3.5 acre feet per acre, or (ii) the annual volume that would accrue to the right during the period of deliverability.

Water District 34 must submit the information requested in the following paragraphs (1) through (6), as applicable, about each water user's plan for using water to augment flows in the river. This information is the minimum detail required before IDWR can verify that 6,110 acre-feet have been acquired for mitigation.

- (1) List the water right number(s) to be used for mitigation for each user.
- (2) For each water right, explain how water will be supplied to satisfy the user's mitigation requirement:
 - (i) Water impounded by rotating a surface water right into Mackay Reservoir can only be used on the acres identified as a place of use by the water right rotated for credit. As a result, the water impounded by rotation of a natural flow water right can only be dedicated for mitigation for ground water diverted to, and beneficially used on the land identified as the place of use by the surface water right rotated into credit.
 - (ii) If a surface water right is offered for mitigation, the ground water user must idle acres irrigated by surface water diverted under the surface water right at a rate of one acre per 3.5 acre feet deliverable under the surface water right. The ground water user must cease diverting a flow rate from natural flow that will total the mitigation volume.
 - (iii) If a ground water right is offered for mitigation, the ground water user must idle acres irrigated by ground water diverted under the ground water right at a rate of one acre per 3.5 acre feet. Ground water equal to the mitigation volume must be pumped into the river, or into a live connection with the river.

- (iv) In lieu of completely idling irrigated acres, a ground water user may forego irrigating and harvesting hay or other crops for a partial season. The ground water user must clearly demonstrate a foregone beneficial use of water under a valid water right, establish the quantity of water that would have been used, and establish that the water that would have been used was physically left in the Big Lost River or diverted into the Big Lost River. IDWR will not consider credit for decreed water not being diverted because of lack of need during unusually wet periods.
- (3) If irrigated acres are to be idled in order to accomplish mitigation, then the location of all idled acres should be specified on standard maps or aerial photographs.
- (4) The volume of rotation credit water to be used in river augmentation must be shown, and should be based on the decreed flow rate times the number of days of projected rotation. Irrigation or Water District records of rotation storage accrual patterns from previous years should be used and submitted to justify the projected rotation days. Rotation credit volume should not exceed 3.5 acre-feet per acre when combined with the amount diverted for irrigation.
- (5) The volume or flow of water that will augment the river through idling acres or foregoing hay cuttings must be clearly shown. Volume estimates should be done with calculations based on 3.5 acre-feet per acre headgate requirement, as adjusted for projected priority cuts in the 2005 season. Using 1997 as the most recent comparable water year, 1887 is projected as the earliest priority cut during the entire season.
- (6) Describe the projected timing for the release of the mitigation water into the Big Lost River. The Water District 34 Water Distribution Rules require release of one-third of the mitigation water in the first semester and two-thirds of the mitigation water in the second semester. In particular, the plan must establish how two-thirds of the 6,110 acre-feet will be released during the second semester mitigation period from July 23 to October 15.
- (7) All water rights offered for mitigation must be transferred for mitigation unless otherwise recognized by IDWR.

Without more specific information about the proposed mitigation water as discussed above, IDWR cannot issue an administrative order recognizing that 6,110 acre-feet of water have been obtained. Absent this order, ground water users must provide 13% of their average pumping for the last two years as mitigation water or face complete curtailment of their ground water rights if no acceptable mitigation plan is provided and a water right for which a petition for delivery call has been filed is not deliverable.

Water District 34 Watermaster and Advisory Committee
May 24, 2005
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IDWR grants and additional fourteen (14) days from the date of this letter for the Water District to gather the information to confirm that the 6,110 acre-feet of water have been acquired. Because of the lateness of the season, no further extensions can be granted. We encourage the watermaster, the Advisory Committee and the District to continue to focus on mitigation and provide more detailed information regarding how water will be provided to augment river flows. Because of the wet spring, and a favorable change in water availability, other alternatives for providing direct mitigation may also be more inviting. We also suggest that the Water District consider plans to provide mitigation water directly to those water users who have made mitigation requests since the volume requirements for direct mitigation to the water users requesting mitigation is presently projected to be much less than 6,110 acre-feet.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Burrell", with a stylized, cursive script.

Steve Burrell

pc: Jim Gregory
Ray Rigby
Richard Reynolds – 2800 N 3233 West, Arco ID 83213
Mitchell Sorensen – 3871 W 2500 N, Moore ID 83255
IDWR Eastern Region Office – Idaho Falls
WD 34 2005 file